IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.1000 OF 1990

Shankar Genu Ganeshkar (Nikam)
deceased by heirs:
1. Dinkar Shankar Ganeshkar,
2.Prakash Shankar Ganeshkar,
village Targaon, Tal.Koregaon,
Dist-Satara. .. Petitioners.

Vs

Krishnabai w/o Appa Teli,
deceased by her heirs:
1.a Shantabai w/oBalwant Deshmane, since
deceased through his lrs.
1(a)-1 Vilas Balwant Deshmane,
1.b Sushila Ramchandra Shiwadekar,
1.c Raghunath Sakharam Deshmane,
All Adults, residents of
Targaon, Taluka Koregaon,
Dist: Satara. .. Respondents

Mr P.B.Shah, for the petitioners.
Mr G.N.Salunkhe with Mr P.A.Pol, for
the respondents.

CORAM : D.B.BHOSALE,J.

DATE : 16th September, 2004.

ORAL JUDGMENT:

1. This petition raises a short yet important question of law as to whether rejection of an application under section 31 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "the Act") as not tenable, would amount to availing and exhaustion of the right of resumption resulting inapplication of section 32F (1)(a) of the Act and prevents further postponement of the right to purchase contemplated thereunder and entitles the tenant to claim the benefit of the first proviso to section 31(1)(b) and become a statutory purchaser. In other words, if a widow makes an application for termination of tenancy for bonafide cultivation under section 31 and if her application is rejected as not maintainable, whether the tenant becomes a statutory owner on the date on which the final order of rejection of the application in respect of such land was passed by treating such date as the postponed date for the purpose of tiller’s day under section 32.

2. The factual matrix, that would be relevant and material for deciding the question involved, in brief, is as follows.

2.1 Deceased Krishnabai Appa Teli (for short, "landlady") was the landlady of the agricultural land in question. The respondents claim to be the heirs and legal representatives of the landlady. Her lands were being cultivated by Shankar Ganesh Nikam as tenant. The petitioners are the heirs and legal representatives of deceased Shankar. The landlady was widow on tiller's day, i.e. 1.4.1957. She applied for possession of the agricultural land in question under section 31 read with section 29 of the said Act before 31.3.1957 to Mamlatdar. Her application for resumption was rejected by Mamlatdar by his order dated 8.2.1958.

2.2 In 1962 the proceedings under section 32G bearing no.651/1962 were dropped by A.L.T., Targaon in view of the fact that the landlady was widow, vide order dated 27.4.1962. There seem to be some controversy about the date of death of the landlady. It is not clear whether She died on 7.12.1959 or she died after 1962. However, I need not enter into that controversy since the tenant did not claim his right to purchase under section 32F(1)(a) after the death of landlady.

2.3 The 32-G proceedings bearing no.651/1962 were initiated in 1962 and dropped as the landlady was widow.

Those proceedings were reopened some time in 1984. All the three authorities, viz. A.L.T., S.D.O. and Tribunal after considering the entire material placed before them, declared purchase of the lands in question ineffective on the ground that the tenant failed to exercise his right under section 32-F(1) of the Act. Hence, the petitioners filed the instant writ petition under Article 227 of the Constitution of India.

3. I heard this petition for quite some time, perused the impugned judgments and other material placed before me with the assistance of the learned counsel appearing for the parties.

3.1 Mr.Shah, learned counsel for the petitioners, contended that the landlady availed of her right to resume under section 31 and once such opportunity is exhausted by her, section 32F(1)(a), being merely a corollary and counterpart of section 31(3), it will not be attracted. The exhaustion of such right prevents the application of section 32F (1)(a) and also further postponement of right to purchase contemplated thereunder and entitles the tenant to claim the benefit of the first proviso to section 31(1)(b) and he becomes a statutory purchaser on rejection of the application

under section 31. Strong reliance was placed by Mr Shah on the judgment of this Court in **Nago Dattu Mahajan Vs.Smt. Yesuodaai Huna Mahajan, 1975 Bombay Law Reporter 427**. Mr Shah further placed reliance on the judgment of this Court in **Vijay Krishnaji Deshpande Vs. Guru Siddha Sidram Mhatre, 2003 (2) Mh.L.J. 81** and contended that the decision of Mamlatdar dated 8.2.1958 shows that the landlady availed of and exhausted the right of resumption even if it is assumed that the application under section 31 was rejected as not maintainable.

4. On the other hand, Mr Salunkhe, learned counsel for the respondents, submitted that the application of the landlady under section 31 was rejected as not maintainable and, therefore, it cannot be said that she availed of and exhausted her right of resumption under section 31. Her application was rejected holding that she was not entitled for resumption under section 31(3) during her lifetime in 1958 itself. The order of Mamlatdar dated 8.2.1958 was based on the law as then prevailing. He further submitted that till this Court in **Bai Jiviben Vs. Bombay Revenue Tribunal, 1959 B.L.R. 1475** took a view that a widow can terminate the tenancy of her land under section 31, the judgment of the Full

Bench of Maharashtra Revenue Tribunal (for short, "Tribunal") was in the field and was being followed by the tenancy authorities. The Tribunal's view till 24.6.1959 was that the widow has no right to maintain an application under section 31(1) of the Act and in view thereof the Mamlatdar has rejected the application of the landlady as not maintainable.

5. This court, in **Nago Dattu Mahajan's** case (supra) was dealing with the petition by the tenant. Respondent No.1, widow, had applied for possession of the land, for personal cultivation, under section 31(1) read with 29 of the Act and her application was rejected on 26.12.1958 and this order was finally confirmed by the Tribunal. The petitioner-tenant claimed that he had become the statutory purchaser of the land on June 15, 1964 under section 32(1)(b). The A.L.T accepted his claim and fixed the price of the land under section 32G of the said Act. That order was confirmed in appeal. The respondent-landlord's revision to the Revenue Tribunal, however, was allowed. The Tribunal held that the claim was covered by section 32F(1)(a) of the Act under which a tenant cannot claim automatic vesting of ownership but he continues to be such tenant till widow dies and certain stages are completed thereafter. The

Tribunal followed the unreported judgment in **Havabibi A Gulam Chafekar Vs.Shaikh Ebrahim Babu Tambu,** (1969) Special Civil Application No.2797 of 1968, decided by Bal J., on February 5,1968. Since there was a conflicting opinion as to whether the right to purchase of a tenant of every landlord specified in s.32F(1)(a), is regulated by this provision even if such landlord avails of his right of resumption under section 31(1). Reference was made to the Division Bench which considered the question whether the tenant's claim to ownership is governed by the first proviso to section 32(1)(b) or section 32F(1)(a) of the Act in the event the landlord avails of and exhausted his right of resumption under section 31. This Court, after interpreting the relevant provisions, has observed thus :

> "Such landlords thus have a choice to avail either of these two provisions for resumption,i.e. s.31(1) or s.31(3), exercise of which depending on the circumstances in which each of them finds himself. No landlord, however, can avail of both the provisions, S.31 having been designed to afford only one

last opportunity of resumption. Any such landlord thus cannot seek resumption under s.31(3) again if he or she has availed of the right under s.31(1). Section 32F(1)(a), being merely corrollary and coutnerpart of s.31(3) its application also would depend on such landlord's choice and competency to avail of the provisions of s.31(3). Consequently its provision cannot be attracted when the right to resume under s.31(1) is availed of and on such opportunity is exhausted by such disabled landlord, i.e. minor, widow etc. as specified in these two sections. Section 32F(1)(a) thus will not be attracted, when the widow or any other such disabled landlord seeks resumption under s.31 (1) before March 31, 957, without regard to whether he or she fails or succeeds in the attempt. It will not apply even if such an application for resumption is ejected. Due to exhaustion of such right the landlord cannot avail of s.31(3) inspite

of being a disabled landlord. Inapplicaiton of s.31(3) results in inapplication of s.32F(1)(a) also. Like the tenants of every other landlord applying under section 31 (1), the tenant of such a landlord also would become an automatic purchaser of the lands on the date of final rejection of such application, as under the proviso to s.32(1)(b)."

"... Where, as in the case before us, the widow or other disabled landlord contemplate under s.31(3), avails herself or himself of the right of resumption by recourse to s.31(1), she or he ceases to be so entitled to claim the resumption thereafter, without regard to whether such application results in resumption of the land or not. Her or his being thus entitled to claim resumption again after April 1, 1957, therefore, cannot even remotely be conceived. This itself prevents the application of s.32F(1)(a) and also the further postponement of the right to

> purchase contemplated thereunder and entitles the tenant to claim the benefit of the first proviso to s.32(1)(b) and become a statutory purchaser on rejection of the application under s.31(1)."

5.1 In **Vijay Krishnaji case** (supra) this Court followed the judgment in **Nago Dattu's** case and in paragraph 8 thereof observed thus ;

> "The ratio of the decision is clear that if the landlord has availed of and exhausted the right of resumption, the landlord cannot be treated as disabled landlord since the fact that he or she is able is established by fact of his or her having made an application. In fact the Division Bench has observed that due to exhaustion of such right, the landlord cannot avail of section 32F(1)(a). Therefore, it makes no difference if the landlord's or landlady's application is abandoned as withdrawn instead of being rejected. In either case the remedy is exhausted and

> the landlord or landlady cannot be treated as disabled."

5.2 It is thus clear that the landlady, once having availed of and exhausted an opportunity of resumption under section 31, provisions of section 32F(1)(a) cannot be attracted indiscriminately merely because the tenant-landlord happened to be a disabled landlord, i.e. minor or widow etc as specified in these two sections. Section 32F(1)(a) thus will not be attracted when the widow or any other such disabled landlord seeks resumption under section 31 before March 31, 1957, without regard to whether he or she avails or succeeds in the attempt. It will not apply even if such an application for resumption is rejected. It is against this backdrop, the question that falls for my consideration is whether the application that was filed by the landlady under section 31 read with section 29 of the Act and which came to be rejected on 8.2.1958, would amount to availing and exhaustion of right of resumption resulting inapplication of section 32F(1)(a).

5.3 In **Bai Jiviben case**, (supra) this Court was considering the question as to whether a widow can terminate the tenancy of the land under section 31 of

the Act. The Tribunal had taken a view that a widow has no such right and that the right to maintain such an application is available only to the successor-in-title of the widow under subsection (3) of section 31. This view was in accordance with the decision of the Full Bench of the Tribunal in **Parvati Bhau Patil Vs. Nago Ragho Patil, decided on October, 22, 1958**. The question that was determined in Bai Jiviben case was that as to whether the view of the Full Bench of the Tribunal was correct. After considering the provisions of section 31 and in particular subsection (1) and (3) thereof,this Court, by its judgment and order dated 24.6.1959, held that sub-section (1) of section 31 gives right to every landlord to terminate the tenancy of his land if he requires it bonafide for his personal cultivation. The relevant observation in the judgment of **Bai Jiviben case** reads thus ;

> "Sub-section (1), therefore, gives a right to every landlord to terminate the tenancy of his land, if he requires it bona fide for personal cultivation. There is nothing in this sub-section, which states that this right shall not be available to a widow or that it

cannot be exercised by her in the manner provided. Clause (ii) in subsection (3), no doubt gives a similar right to the successor-in-title of a widow, but it does not in any way restrict the right, which the widow herself possesses, of terminating the tenancy under sub-s.(1) of s.31. The object of this clause is to protect the rights of the successor-in-title of the widow and to ensure that he does not suffer owing to negligence or inaction on the part of the widow. But there are no words either in this clause or in any other part of the section, which deprive a widow of the right conferred upon every landlord under subsection (1). It could never have been the intention of the Legislature that even though a widow may require additional income fro her land for her maintenance, she should not be able to obtain possession of the land during her lifetime and that this right should only be available to her successor-in-title."

5.4 It is thus clear that the law as then prevailing and being followed by the tenancy authorities,until this Court interpreted the provisions of subsection (1) of section 31 of the Act in Bai Jiviben case on 24.6.59, was the view taken by the Full Bench of the Tribunal. The Tribunal had taken a view that a widow has no right to maintain an application under section 31 of the Act. The landlady, in the instant petition, was therefore, nonsuited by the Mamlatdar by his order dated 8.2.58 holding that her application under section 31(3) was not maintainable without entering into a question whether she could maintain her application under section 31(1) of the Act. This position of law continued till this Court in Bai Jiviben case interpreted the provisions of section 31 by its judgment dated 24.6.1959. It is against this backdrop the question involved in the instant petition will have to be considered as to whether rejection of the application of the landlady under section 31 by the Mamlatdar as not maintainable would amount to "availing and exhaustion" of her right of resumption. Appropriate answer to this question in consonance with justice would be in the negative. The landlady cannot be said to have "availed of and

exhausted" her right of resumption under section 31(1) since she was nonsuited by the Mamlatdar on the basis of the judgment of the Full Bench of the Tribunal holding that the widow cannot maintain application under section 31 (1) of the Act. The filing of the application under section 31 (1) or 31 (3) by the landlady as required under subsection (2) of section 31 and rejection of her application in February 1958, though amounts to "availing of the right" of resumption cannot be termed as "exhaustion of such right" in view of the fact that her application was rejected as not maintainable. In view of the peculiar facts and circumstances of the present case, I am of the considered opinion, that the judgments on which Mr Shah placed reliance upon would not apply to the facts of the present case. The view taken by this Court in **Vijay Deshpande's case** (supra) that even withdrawal of the application would amount to "availing and exhaustion of the right" under section 31, would not come in the way of the petitioners. The landlady in that case "availed of the right" of resumption and by withdrawing her application "deemed to have exhausted the right of resumption" and therefore that analogy also would not apply to the facts of the present case. Merely the word "rejection" as appeared in the order of the Mamlatdar dated 8.2.1958 would not

be sufficient to hold that the right of resumption under section 31 was exhausted.

6. In the circumstances, this petition is dismissed. Rule stands discharged.

. The tenancy authorities may proceeded with the further proceedings as per the order dated 13.4.1987 rendered by the Addl.Tahsildar and Agricultural Lands Tribubal, Koregaon in Case No.Targaon-651.

(D.B.Bhosale, J.)

HIGH COURT
CIVIL APPELLATE SIDE

WRIT PETITION NO.1000 OF 1990

Date of Judgment:

16th September, 2004

For approval and signature

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be

allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?

FARAD CONTINUATION SHEET NO.:

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.1000 OF 1990
Shankar Genu Ganeshkar Vs. Krishnabai.. & ors.

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr P.B.Shah, for the petitioners.

Mr G.N.Salunkhe with Mr P.A.Pol, for the respondents.

CORAM : D.B.BHOSALE,J.
DATE : 16th September, 2004.

For the reasons recorded in the accompanying judgment, the Court passes the following operative order :

"In the circumstances, this petition is dismissed. Rule stands discharged.

The tenancy authorities may proceeded with the further proceedings as per the order dated 13.4.1987 rendered by the Addl.Tahsildar and Agricultural Lands Tribubal, Koregaon in Case No.Targaon-651."

For Addl.Registrar,

Dt:30.9.04